

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 VS. CR. NO. 15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

For the Government: Ms. Maria Armijo; Mr. Randy
14 Castellano; Mr. Matthew Beck

15 For the Defendants: Mr. Brock Benjamin; Ms. Cori
16 Harbour-Valdez; Mr. Patrick Burke; Mr. Jim Castle;
17 Mr. Robert Cooper; Mr. James Lahann; Mr. Orlando
18 Mondragon; Mr. Noel Orquiz; Mr. Billy Blackburn; Mr.
19 Scott Davidson; Mr. Santiago Hernandez; Mr. Richard
Jewkes; Ms. Amy Jacks; Mr. Josh Spencer; Mr. B. J.
Crow; Mr. Marc Lowry; Ms. Theresa Duncan; Ms. Amy
Sirignano; Mr. Michael Davis; Mr. Ryan Villa; Ms.
Justine Fox-Young; Mr. Donovan Roberts; Ms. Erlinda
Johnson; Ms. Angela Arellanes; Mr. Alfred Creecy

21 For the Defendants (Via telephone): Ms. Carey
Bhalla; Mr. Christopher Adams

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1 THE COURT: Good morning everyone. I
2 appreciate everyone making themselves available to me
3 this morning.

4 All right. Court will call United States
5 of America versus Angel DeLeon, Criminal Matter No.
6 15-CR-4268 JB.

7 If counsel will enter their appearances for
8 the Government.

9 MS. ARMIJO: Good morning, Your Honor.
10 Maria Armijo, Randy Castellano, and Matthew Beck on
11 behalf of the United States.

12 THE COURT: All right. Ms. Armijo, Mr.
13 Castellano, Mr. Beck, good morning to you.

14 And for -- we'll take these in some order.
15 For Defendant Lawrence Gallegos?

16 MR. BENJAMIN: Good morning, Your Honor.
17 Brock Benjamin on behalf of Mr. Gallegos.

18 THE COURT: All right. Mr. Benjamin, Mr.
19 Gallegos, good morning to you.

20 THE DEFENDANT: Good morning.

21 THE COURT: And for Defendant Edward Troup?

22 MS. HARBOUR-VALDEZ: Good morning, Your
23 Honor. Cori Harbour-Valdez and Patrick Burke on
24 behalf of Mr. Troup.

25 THE COURT: All right. Ms. Harbour-Valdez,

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1 Mr. Burke, Mr. Troup, good morning to you.

2 THE DEFENDANT: Good morning, sir.

3 THE COURT: And for Defendant Billy Garcia?

4 MR. COOPER: Your Honor, Bob Cooper and Jim
5 Castle on behalf of Mr. Garcia, and he's present
6 today.

7 THE COURT: All right. Mr. Cooper, Mr.
8 Castle, Mr. Garcia, good morning to you.

9 And for Defendant Allen Patterson?

10 MR. LAHANN: Good morning, Your Honor.
11 Jeff Lahann on behalf of Mr. Patterson.

12 THE COURT: All right. Mr. Lahann, glad to
13 have you back.

14 MR. LAHANN: Good to be here.

15 THE COURT: Mr. Patterson, good morning to
16 you.

17 THE DEFENDANT: Good morning, Your Honor.

18 THE COURT: For Defendant Christopher
19 Chavez?

20 MR. MONDRAGON: Good morning, Your Honor.
21 Orlando Mondragon on behalf of Christopher Chavez.

22 THE COURT: All right. Mr. Mondragon, good
23 morning to you. Mr. Chavez, good morning to you.

24 THE DEFENDANT: Good morning, Your Honor.

25 THE COURT: And for Defendant Javier

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1 Alonso?

2 MR. ORQUIZ: Good morning, Noel Orquiz for
3 Mr. Alonso.

4 THE COURT: All right. Mr. Orquiz, good
5 morning. Mr. Alonso, good morning to you.

6 And for Defendant Arturo Arnulfo Garcia.

7 MR. BLACKBURN: Billy Blackburn and Scott
8 Davidson on behalf of Mr. Garcia.

9 THE COURT: All right. Mr. Blackburn,
10 Mr. Davidson, Mr. Garcia, good morning to you.

11 And for Defendant Mario Rodriguez?

12 MR. HERNANDEZ: Good morning, Your Honor.
13 Santiago Hernandez on behalf of Mr. Rodriguez.

14 THE COURT: All right. Mr. Spencer (sic),
15 good morning to you. Mr. Hernandez, good morning to
16 you. And Mr. Rodriguez, good morning to you.

17 THE DEFENDANT: Good morning, Your Honor.

18 THE COURT: And for Mauricio Varela?

19 MR. SPENCER: Good morning, Your Honor.
20 Joshua Spencer, standing in for Joe Spencer and Mary
21 Stillinger on behalf of Mr. Varela.

22 THE COURT: All right. Mr. Spencer, good
23 morning to you. Mr. Varela, good morning to you.
24 And, Mr. Varela, do you consent to Josh Spencer
25 standing in for Joe Spencer and Ms. Stillinger?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Varela, good morning to
3 you.

4 And for Defendant Daniel Sanchez?

5 MR. JEWKES: Good morning, Your Honor.

6 Richard Jewkes and Amy Jacks, representing Daniel
7 Sanchez, who is present before the Court.

8 THE COURT: All right. Mr. Jewkes,
9 Ms. Jacks, good morning to you. Mr. Sanchez, good
10 morning to you.

11 THE DEFENDANT: Good morning.

12 THE COURT: And for Defendant Conrad
13 Villegas?

14 MR. CROW: Good morning, Your Honor. B.J.
15 Crow for Mr. Villegas, who is present.

16 THE COURT: All right. Mr. Crow, Mr.
17 Villegas, good morning to you.

18 THE DEFENDANT: Good morning.

19 THE COURT: And for Defendant Anthony Ray
20 Baca?

21 MR. LOWRY: Good morning, Your Honor. Marc
22 Lowery and Theresa Duncan on behalf of Anthony Ray
23 Baca.

24 THE COURT: Mr. Lowry, Ms. Duncan, good
25 morning to you. And Mr. Baca, good morning to you.

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1 THE DEFENDANT: Good morning.

2 THE COURT: And for Defendant Christopher
3 Garcia? Let's take those that are present here in
4 the courtroom first.

5 MS. SIRIGNANO: Good morning, Your Honor.
6 Amy Sirignano on behalf of Christopher Garcia. Mr.
7 Adams is on the phone.

8 THE COURT: All right. Ms. Sirignano, good
9 morning to you. Mr. Adams, good morning to you.

10 MR. ADAMS: Good morning, Your Honor.

11 THE COURT: Mr. Garcia, good morning to
12 you. And Mr. Adams, are you on the phone?

13 MR. ADAMS: I am.

14 THE COURT: Good morning to you, Mr. Adams.
15 And for -- let me do the same thing for the Defendant
16 Carlos Herrera?

17 MR. DAVIS: Good morning, Judge. Michael
18 Davis on behalf of Mr. Herrera. And Ms. Carey
19 Bhalla --

20 MS. BHALLA: Excuse me, Your Honor. Carey
21 Bhalla here on the phone.

22 THE COURT: All right. Mr. Davis, Ms.
23 Bhalla, good morning to you. Mr. Herrera, good
24 morning to you.

25 And Defendant Rudy Perez?

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1 MR. VILLA: Good morning, Your Honor. Ryan
2 Villa and Justine Fox-Young on behalf of Mr. Perez.

3 THE COURT: All right. Mr. Villa, Ms.
4 Fox-Young, good morning to you. Mr. Perez, good
5 morning to you.

6 THE DEFENDANT: Good morning.

7 THE COURT: And for Defendant Andrew
8 Gallegos?

9 MR. ROBERTS: Good morning, Your Honor.
10 Donovan Roberts for Mr. Gallegos.

11 THE COURT: All right. Mr. Roberts, Mr.
12 Gallegos, good morning to you.

13 For Defendant Santos Gonzalez?

14 MS. JOHNSON: Good morning, Your Honor.
15 Erlinda Johnson on behalf Santos Gonzalez, who
16 appears before the Court.

17 THE COURT: All right. Ms. Johnson, Mr.
18 Gonzalez, good morning to you.

19 And for Defendant Shauna Gutierrez?

20 MS. ARELLANES: Good morning, Your Honor.
21 Angela Arellanes for Ms. Gutierrez, who appears.

22 THE COURT: All right. Ms. Arellanes, Ms.
23 Gutierrez, good morning to you.

24 And for Defendant Brandy Rodriguez?

25 MR. CREECY: Good morning, Your Honor.

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1 Alfred Creecy on behalf of Ms. Rodriguez, who is
2 present before the Court.

3 THE COURT: All right. Mr. Creecy, Ms.
4 Rodriguez, good morning to you.

5 THE DEFENDANT: Good morning.

6 THE COURT: All right. We're here on a
7 couple of motions. Let me say to you that I have
8 been working on the motion to sever, that opinion.
9 It's now -- because of all the ones we argued over
10 the last -- last week, over those three days, and the
11 one we're probably going to argue today, I haven't
12 worked on the one today, other than reading for it --
13 but I'll probably put it in the opinion -- we're
14 right at 151 pages just trying to understand all the
15 arguments. And I expect it to increase another 20
16 pages at least. So that is the opinion I'm working
17 on, and I will try to get that out to you. I do want
18 to try to analyze each one of the arguments that all
19 the parties have made.

20 And I probably will give some guidance on
21 the Brady issue, as much as I can. So I probably
22 will make a ruling on the materials that I have on
23 the Brady issues. Of course it will be subject to
24 people bringing in new information that I may have to
25 analyze down the road. But I think we're barreling

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1 toward trial, so I need to give you as much guidance
2 as I possibly can. So when issues are presented, I'm
3 going to try to do that. So the Brady material -- I
4 keep saying Brady, I mean Bruton -- and that issue as
5 much as possible. So every time I was using the word
6 Brady I meant Bruton.

7 But the reason I had Brady on my mind is
8 because the Government filed their brief on the
9 timing. I have had a chance to read it -- I haven't
10 had a chance to look at it. I still think that most
11 of those cases that -- particularly the ones that I
12 wrote, and Ruiz, and the Tenth Circuit responding to
13 Ruiz are backward-looking cases. And certainly, if
14 somebody raises probably at trial, or on the eve of
15 trial or after trial that there has been a Brady
16 violation, I'm going to probably draw some
17 distinctions, just as other judges have between
18 Giglio and Brady material, as far as finding some due
19 process violation.

20 But I think going forward, it's a totally
21 different issue of how to manage this case. I was
22 somewhat influenced by the -- some of the discussion,
23 I think in the D.C. Circuit, that, you know, there
24 might be situations in which Giglio material might
25 impinge greatly upon the Government's Jencks

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1 privileges of when to disclose things. There may be
2 some issues, as far as endangering some witnesses or
3 something like that. On a case-by-case basis, I'm
4 willing to take a look and say that some things may
5 need to be delayed; that occurs even sometimes with
6 Brady material.

7 But in a case of this magnitude, with this
8 many documents, I think the general rule still has to
9 remain that Brady material and Giglio material has to
10 be disclosed at -- on the same basis, because Giglio
11 is a subset of Brady material. So at the present
12 time, I'm not inclined to change that rule.

13 But I also think the Government is always
14 free to approach the Court and say, Look, if I have
15 to disclose this, this is going to create some real
16 problems. And so I -- but that occurs with Brady.
17 And that's really what we're doing with some of the
18 confidential informants; I'm ordering the disclosure
19 of some of those under Brady and Giglio and Rule 16,
20 not under Roviaro. And so some of that is we're
21 still working as Brady and Giglio. So the timing of
22 that is always subject to the Government coming in
23 and saying this particular situation, this particular
24 document, this particular identification, this
25 particular evidence, can we delay it some because

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1 this is what's going to happen: We're going to
2 endanger somebody or something like that. But I
3 think that has to be on a case-by-case,
4 evidence-by-evidence basis, and the Government has to
5 come in and show that, rather than -- but I think as
6 a general rule, we're moving forward. We're not
7 talking about plea agreements. We're not talking
8 about post-trial failures to disclose. Those are the
9 kind of things that I think Ruiz and those are
10 talking about. And in that situation, you're
11 balancing. And yes, Giglio material is probably not
12 going to create the due process problems that the
13 failure to disclose Brady, which is exculpatory
14 material, may create.

15 But, as a general rule, I still think --
16 and I'll look at it closer -- but I'm still inclined
17 to think that those cases don't cause me to deviate
18 from treating those two categories one a subset of
19 the other.

20 I understand Ms. Armijo will be stepping
21 out around 9:30 to cover another hearing.

22 I understand, Ms. Johnson, that you worked
23 out something, but not quite worked out -- I guess
24 this is public, so it's not something that I'm
25 breaching any obligations on. So you do not want

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1 your motions heard today, is the upside from you
2 working out something that still needs to have some
3 details to be hammered out. Is that correct?

4 MS. JOHNSON: That is correct, Your Honor.
5 We are trying to work out -- in principle, we have an
6 agreement. There are some -- we're still working on
7 some of the language and some of the stipulations.
8 But the Court is correct. We'd ask that the Court
9 not hear our motions today. In the event that we are
10 unable to work out an agreement, obviously, or work
11 out the details, then we'll proceed.

12 THE COURT: All right. Thank you, Ms.
13 Johnson.

14 Then I guess that leaves us then for today
15 with Defendants Troup and Billy Garcia's motion to
16 sever Counts 1 and 2 of the agreement. So Mr. Burke,
17 Ms. Harbour-Valdez, Mr. Cooper, Mr. Castle, are you
18 going to take the lead on this?

19 MR. BURKE: I will, Your Honor.

20 THE COURT: All right. Mr. Burke.

21 MR. BURKE: Thank you, Your Honor. Good
22 morning.

23 THE COURT: Good morning to you.

24 MR. BURKE: Your Honor, we filed this
25 motion on behalf of Mr. Troup and Mr. Bill Garcia on

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1 February 2.

2 THE COURT: Right.

3 MR. BURKE: And since then several
4 important things have happened. First, we had a long
5 discussion on February 7. I think we took the better
6 part of the day discussing severance issues that day.
7 There was considerable back and forth with the
8 parties. And the Court took all of that under
9 advisement.

10 Something else that has happened is that on
11 March 9, there was a second superseding indictment.
12 So to some extent our pleading is modified in
13 accordance with that second superseding indictment.

14 And then the most important thing that has
15 happened is that on May 9th you gave us your ruling,
16 and you went into exquisite detail as always. You
17 had analyzed Rule 8. You talked about the Gould
18 case, the Pursley case. You talked about Judge
19 Weinstein's opinion in the Gallo case. You talked
20 about Zafiro. And you came out at a place, after
21 analyzing Rule 14, that you have almost unlimited
22 discretion. And I believe that is the law under all
23 of these circumstances. The crux of it was that you
24 said that a jury must be reasonably able to consider
25 the evidence as to each defendant separately. And

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1 you said many more things, but that was a kernel of
2 your ruling. You noted that judicial resources can
3 be considered. The hardship on administrative
4 structure of the Court is also --

5 THE COURT: How do you feel -- as I reread
6 everything, I was again struck by the Government's
7 insistence that I have to find such things as
8 prejudice to the defendants -- however you find
9 that -- before I can consider the administrative
10 hurdles of trying 19, 20 people in a single case.
11 How do you feel about that argument?

12 MR. BURKE: If I may be blunt, Your Honor,
13 I thought it was dumb. I think the way you analyzed
14 it -- and I read the transcript of your ruling from
15 the bench on May 9, and I think you nailed it. Those
16 are not conditions precedent to getting to the larger
17 issues that you then addressed in your remarks on May
18 9. I do not believe those are conditions precedent
19 and I do not believe that's what the law is.

20 THE COURT: Well, what case would you point
21 to? I guess what they're saying is that I have to
22 satisfy the -- I'll call them statutory, but they're
23 really the rule requirements before I proceed to
24 discuss just the administrative hurdles. In other
25 words, I've got to analyze it in terms of some

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1 prejudice to either one of the parties, be it the
2 United States, or be it the defendants, before I can
3 start looking at the size of tables, courtrooms,
4 shackles, that sort of stuff.

5 MR. BURKE: Your Honor, I hadn't
6 anticipated the question, but fortunately, I did
7 bring our reply to the podium. And I believe the
8 cases that would indicate that that test is
9 inappropriate would be some of your remarks in United
10 States v. Gould, which is cited on page 4 of the
11 reply, Document 1014. In addition, the cites to
12 Zafiro, which is on page 5 of 14 pages in the reply.
13 And in Fox v. Ward, the Court explained a description
14 of "real prejudice means that the risk of prejudice
15 is not illusory. In order to prevail on such a
16 theory of severance the defendant must show real
17 prejudice rather than merely note that each defendant
18 is trying to exculpate himself." And I may have some
19 additional cites in the reply, which I think point to
20 your analysis being absolutely correct.

21 THE COURT: I reread yesterday your
22 attachment to Dr. Lieberman, out of the University of
23 Nevada. After I made my ruling at the beginning of
24 the hearings in mid May, did y'all sit down with Dr.
25 Lieberman, and did he say I was solving all your

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1 problems?

2 MR. BURKE: He sure liked a lot of the
3 solutions that came about as a result of the
4 severance that you indicated you were pursuing. And
5 I don't want to mislead the Court. I have had an
6 exchange with Professor Lieberman. I've had many
7 exchanges with him. I've had a couple since May 9.
8 And that is my short answer to the question.

9 THE COURT: So you did convey the -- where
10 we're going with the severance that has been granted,
11 and he thought it solved some of the problems?

12 MR. BURKE: Exactly.

13 THE COURT: And what do you think now about
14 your particular situation, your representation of Mr.
15 Troup? How do you -- what is left, then, of your
16 motion? And maybe, more particularly, what do you
17 see as the prejudice that remains from the severance
18 that we now have?

19 MR. BURKE: Your Honor, I was here to ask
20 you to get us down to the Counts 1 and 2 defendants.
21 That's the first answer. And that would be Joe
22 Gallegos, Edward Troup, Billy Garcia, Allen
23 Patterson, and Christopher Chavez. That is my hope.
24 I know you're not going to change your mind today,
25 and say, Sure, Mr. Burke, that sounds like a great

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1 idea.

2 But the prejudice for the Counts 1 and 2
3 defendants is that Adrian Burns homicide is nasty,
4 and that's Counts 4 and 5. And then you have -- we
5 would have Counts 13 through 16, and we have this old
6 homicide, you know, 2001. And yet the events that
7 are portrayed in Counts 13 through 16 not only bring
8 us out of prison into the real world, so to speak,
9 and that's the 2012 homicide involving Adrian Burns.
10 We then have the beatdown of Jose Gomez, and that's
11 Counts 14 through 16. And then there was an
12 incident, and that's in 2016.

13 So expanding from 2001 forward to 2012, and
14 then 2016, does create some prejudice for what I'm
15 calling the Counts 1 and 2 defendants, the five
16 people.

17 THE COURT: Let me ask you this, because
18 this is kind of what I'm thinking, and you react to
19 it and tell me if you think I'm wrong: Now that
20 we've kind of reduced the trial, and now you're
21 thinking about the trial that you are going to have
22 on July 10th, and what that looks like, it seems to
23 me that the jury will be able to compartmentalize the
24 stories much better. I mean, it's helped me, in
25 fact -- you know, I mean, it's a lot of people to

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1 learn, a lot of names to learn, and things like that.
2 It helps me now. But it seems like sitting in a jury
3 room -- or sitting with a jury, y'all over here, over
4 there, they can compartmentalize the story, memorize
5 the characters pretty well, and understand it. I'm
6 sure you've thought about what that trial is going to
7 look like. It seems to me it's a much more
8 manageable trial for all of us, but particularly for
9 the jury. Your thoughts?

10 MR. BURKE: I have thought about that every
11 day since then, and what a trial will look like. And
12 I am -- to be candid -- so glad that we are not in a
13 trial with the Counts 6 through 12 defendants,
14 because that would have been -- I don't know how we
15 could have -- how a jury could have compartmentalized
16 all of that.

17 I am still here as an advocate for Edward
18 Troup to not relent entirely and say that dealing
19 with Counts 4 and 5 and 13 through 16 in the same
20 trial as Counts, you know, 1 and 2, there will have
21 to be some spillover from the ongoing discussion, as
22 we bring it forward into the more recent times.

23 So I'm very happy about some things. But
24 as an advocate, I can't say that I will stop.

25 THE COURT: All right. What else, Mr.

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1 Burke, on this motion?

2 MR. BURKE: Your Honor, I did want to
3 say -- one of the reasons -- and it isn't much
4 because I know you've read it thoroughly -- but, for
5 example, the 2001 defendants, Edward Troup, my
6 client, he was released from prison in 2012, and then
7 was arrested December 2015. And in that three and a
8 half year period he did catch some more time in jail
9 for violations relating to addiction, but he really
10 made a life, and had been married and was working.
11 And that's why I want to keep it pushed back to -- as
12 far back as I can, and avoid 13 through 16. And I
13 just wanted to make that factual point.

14 THE COURT: You'd like to tell the jury
15 this is an arrest for an old crime?

16 MR. BURKE: That's going to be one of the
17 things that will be said, and as long as we're being
18 candid, and then link it into the arguments about the
19 enterprise. And you saw our arguments about there
20 being different factions. We are not convinced there
21 is a single enterprise, and we will be making that
22 argument. But again, being candid with the Court,
23 we're not there yet. We couldn't ask you to make a
24 preliminary ruling on that. You'll need to see and
25 hear more facts before we get back to that.

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1 THE COURT: Is that something that I will
2 ever have to make some ruling on, or is that just one
3 of the issues that the jury has to hear the evidence
4 and make some determination at the end of the trial?

5 MR. BURKE: Well, you'll certainly be
6 hearing about it at halftime, Your Honor. And then
7 maybe it then goes to the jury. But I don't think
8 it's an automatic that it's a jury question.

9 THE COURT: Okay.

10 MR. BURKE: And, Your Honor, what has
11 happened is our back and forth has sort of taken up
12 all the comments I was going to make. I did
13 conclude -- or we concluded our reply with a comment
14 that there should be no illusions that if Counts 1
15 and 2 are tried with 4 and 5 and 13 through 16, it
16 will be prejudicial. And I don't want to ignore that
17 final argument.

18 THE COURT: And nothing that I have done
19 over -- since I've been working on this opinion has
20 shaken my thoughts that that needs be severed.

21 MR. BURKE: Very good, Your Honor.

22 THE COURT: All right. Anything else, Mr.
23 Burke?

24 MR. BURKE: That's all. Thank you.

25 THE COURT: Thank you, Mr. Burke.

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1 Anyone else that joined the motion want to
2 say anything? Anybody? Mr. Castle, Mr. Cooper,
3 anything you want to say?

4 MR. CASTLE: Yes, Your Honor, Jim Castle.

5 THE COURT: Mr. Castle.

6 MR. CASTLE: In response to the Court's
7 first question about whether a finding of prejudice
8 was necessary for severance, I think --

9 THE COURT: I'm characterizing the
10 Government's correct; that's their argument?

11 MR. CASTLE: Yes, I believe so. And I
12 think what they've conflated is the inherent
13 authority of the Court, then the procedural rules.
14 Rule 14 doesn't even talk about the concept of case
15 management. The idea of case management -- and it
16 actually isn't really addressed at all -- that
17 flows -- it derives itself from the Court's
18 independent power and supervisory power to handle its
19 docket.

20 So these are two different considerations
21 that proceed along separate paths. So I think that
22 the proper construct is, in dealing with these kinds
23 of issues, you're looking at Rule 8, Rule 14, and
24 then also the independent authority of the Court to
25 supervise its docket as separate considerations.

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1 THE COURT: Well, I guess what I hear the
2 Government saying -- and these are my words -- is
3 like, Look, Judge, we've got the power to indict 100
4 people if we want to. We can throw them all in the
5 same case. And you can't come along -- if it's not
6 misjoined under Rule 8, you don't have the power to
7 start severing it away under Rule 14, unless you
8 first find that there is going to be prejudice to the
9 defendants. You can't start worrying about size of
10 your courtroom, you can't be worrying about the size
11 of the -- where the shackles are going to be shown.
12 You can't be worried about this or that until you
13 first find that this somehow prejudices one of the
14 parties. And it doesn't prejudice us, because we
15 brought the case. So you've got to show that it
16 prejudices the defendant. What's wrong with that
17 argument?

18 MR. CASTLE: Well, what's wrong with that
19 argument is it doesn't take into account the Court's
20 inherent authority to manage its courtroom. I mean,
21 100 -- let's take it to its ridiculous extreme.

22 THE COURT: Let's look at it as overriding
23 their prosecutorial discretion. They could have
24 brought 100 indictments, but they didn't. They
25 wanted them in one. And they're saying you've got to

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1 have a good reason to overrule our separation of
2 powers decision that we want to bring these people in
3 one case rather than 100 cases.

4 MR. CASTLE: Well, I agree with their
5 concept, but there has to be a good reason. But I
6 believe the inherent authority of the Court to manage
7 its docket is good reason. And the separation of
8 powers favors the judiciary in managing its docket,
9 not the executive branch in defining, essentially,
10 how this Court is going to provide justice to the
11 defendants.

12 THE COURT: All right. Anything else, Mr.
13 Castle?

14 MR. CASTLE: No, Your Honor.

15 THE COURT: All right. Thank you, Mr.
16 Castle.

17 Any other defendant want to speak on
18 Mr. Billy Garcia and Mr. Troup's motion to sever 1
19 and 2? Anyone else?

20 All right. Mr. Castellano, are you going
21 to take the lead for the Government on this?

22 MR. CASTELLANO: Yes, Your Honor.

23 THE COURT: Mr. Castellano. After a week
24 of reflecting on the severance and the trial I'm
25 giving you, any second thoughts? Any reflections on

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1 the trial we're looking at?

2 MR. CASTELLANO: Not really, Your Honor. I
3 mean, I would note our objection for the record
4 regarding severance, but I think the Court has broken
5 up the case in the best way possible. We're not
6 going to fight severance any longer, if that's the
7 Court's decision. So I won't belabor that point.

8 I will just state where our position came
9 from, which was a quote from the Gould case, which
10 talks about first looking at antagonistic defenses
11 and prejudice, before getting to the meaning of the
12 first two factors, followed by the Court's
13 administration of justice. So that's where our
14 position comes from.

15 But I also agree that the Court does have a
16 great deal of discretion under Rule 14. Even in our
17 brief we cite to that. It says, "Even if prejudice
18 is shown, Rule 14 does not require severance.
19 Rather, it leaves the tailoring of the relief to be
20 granted, if any, to the district court's sound
21 discretion." We don't dispute that. We think the
22 Court has discretion. We think the Court has
23 exercised that discretion. If the Court's going to
24 leave the case severed this way, we really don't have
25 much more to say about it.

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1 I will say regarding Mr. Troup, he is
2 charged not only in Count 1, he's charged in Count 3.
3 So those are two murders six years apart from each
4 other. So there is an indication even from one
5 defendant of the ongoing nature of the enterprise,
6 just one person. So splitting it up would also -- I
7 mean, I don't think it changes the presentation at
8 trial. I think both murders will still be presented
9 at two different trials, even if he was tried in two
10 trials.

11 But having said that, if you're not
12 inclined to change your decision, I'm not inclined to
13 argue any further, Your Honor. I think we can save
14 the time.

15 THE COURT: Do you have any thoughts --
16 same thing I was asking Mr. Burke -- have you sort of
17 sat here and visually thought of this trial and how
18 it's going to look in all its robustness, and you
19 have to work with everybody here to try to do justice
20 to everybody in the room and help me try this case to
21 provide justice for everybody in the room? Have you
22 thought about the people that you think are going to
23 be in that room on July 10th, who you think is going
24 to be left, and these sort of three different stories
25 we're going to be presenting to the jury? Do you

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1 think we can compartmentalize it and present it in a
2 way so it's going to be fair to everybody that's on
3 the defense side?

4 MR. CASTELLANO: I do think we can
5 compartmentalize, Your Honor. I mean, there are
6 individual counts, and within those counts there are
7 individual stories. So the jury will hear about a
8 Garza murder, a Castillo murder, a Sanchez murder, a
9 Burns murder. So each of those, even though there is
10 an overarching presentation of the evidence, we still
11 have to prove each of those individual murders. And
12 I think they have their own story, and the jury can
13 compartmentalize each of those stories.

14 THE COURT: All right. Anything else you
15 want to say on this motion to sever, Mr. Castellano?

16 MR. CASTELLANO: No, Your Honor.

17 THE COURT: All right. Thank you, Mr.
18 Castellano.

19 Mr. Burke, anything further?

20 MR. BURKE: No. Thank you, Your Honor.

21 THE COURT: All right. Anyone else want to
22 say anything else on this motion?

23 Well, I'm granting it in part, denying it
24 in part. And that's probably how I'll write it up in
25 this current opinion that way. I think for the

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1 present time, I'm staying with the severance that
2 I've granted. I'm not backing off from that, but I'm
3 also not inclined to expand it. I think we all noted
4 last week we may be looking at this thing to the very
5 end. But right at the moment, I think I'm inclined
6 to keep it where it is.

7 There is always a changing landscape in a
8 case like this, or any case, but particularly this
9 one, with so many defendants. And my prediction
10 that -- and the Government's prediction that some
11 people in the room may not be around for trial may
12 change the landscape. And I'll just have to take
13 that into consideration when it comes. But on the
14 present landscape, I'm inclined to stay where I am
15 and grant the motion in part and deny it in part.

16 All right. The other motion that we need
17 to take up is the Mr. Troup and Mr. Billy Garcia's
18 motion for an order to compel the disclosure of
19 certain materials. My impression, from reading the
20 Government's response, and the fact there wasn't a
21 reply, was that there may have been some progress,
22 maybe considerable progress, in meeting some of the
23 concerns of Mr. Troup and Mr. Garcia.

24 Mr. Burke, are you arguing this? Okay.

25 All right. Mr. Castle.

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1 MR. CASTLE: Your Honor, the basis of the
2 motion to compel, essentially, had eight different
3 categories that have been pending in requests from
4 the defense for almost a year. In fact, next Tuesday
5 will be the one-year anniversary of when we first
6 requested all these items. There are eight different
7 categories. Of those eight categories, the
8 Government and the defense have come to an agreement
9 for production by May 30, 2017. And when I say
10 production, they'll either produce it or essentially
11 explain why it can't be produced, and if it was
12 destroyed whether -- you know, when it was destroyed,
13 if they can obtain that information.

14 There are some subagreements for different
15 categories --

16 THE COURT: If it was destroyed, you want
17 to know when it was destroyed? Is that what you
18 want?

19 MR. CASTLE: Yes. We made this
20 agreement -- depending on the category, there are
21 some different terms, but we have an agreement in
22 writing for all those. I don't know if the Court
23 wants us to put that on the record.

24 THE COURT: That's totally up to you. I
25 mean, if y'all are happy, I'm happy. If you feel

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1 like you need protection and you want to put it on,
2 it's totally your call, Mr. Castle.

3 MR. CASTLE: I accept the Government's
4 word, and that's good enough for me. Obviously, if
5 something happens, then we can always reraise it.

6 THE COURT: Okay.

7 MR. CASTLE: So I'd like to, if possible,
8 address the one contested area.

9 THE COURT: All right.

10 MR. CASTLE: That is in the motion to
11 compel, it's Section F, which is the FBI
12 investigative files. The request for the Government,
13 namely, the U.S. Attorneys in this case to review
14 various FBI files has somewhat of a tortured history.
15 It first raised its head in Document 360, which was a
16 response by the defense concerning the Government's
17 disclosures about Judge Gonzales' involvement in
18 previous investigations.

19 THE COURT: Yeah, I saw that attachment to
20 your -- to one of the things here. It may have been
21 the response. But I did see that.

22 MR. CASTLE: In that motion we essentially
23 took the first layer of the onion off, and identified
24 a few files that we noticed being referenced in our
25 view of discovery. Our motion -- our first motion

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1 for specific discovery was the second layer of that
2 onion and identified some additional files. And
3 finally, I think our follow-up pleadings unveiled a
4 third layer.

5 Essentially, there has been ten motions
6 dealing with this issue that have been filed by the
7 defense. And we still don't have these materials.
8 There has also been one hearing, in October, the
9 Court held on this issue. And there is two
10 problems --

11 THE COURT: And this is the one where -- I
12 have written on this one, right?

13 MR. CASTLE: Yes.

14 THE COURT: I've given you a written
15 opinion on this issue?

16 MR. CASTLE: Yes, you did, Your Honor.

17 The first problem is -- there are
18 essentially two problems. One is the general
19 approach by the Government to their obligations. And
20 the second issue is specific files that the
21 Government has decided not to review, or they have
22 decided to do a cursory review of.

23 Addressing the first issue, the Government
24 had the FBI review five files. And in that review --

25 THE COURT: Just so I make sure I

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1 understand the files. These are files of previous
2 investigations by the FBI, and to a certain degree
3 the U.S. Attorney's Office of the SNM Gang or SNM
4 Gang members? Is that what we're talking about?

5 MR. CASTLE: There are eight files that we
6 believe are specific to SNM. And there is one file
7 that we believe referenced SNM Gang members. The
8 Government -- what they've done, is out of the nine
9 files that we identified, they reviewed -- well, they
10 had the FBI review five of those files. And those
11 are up on the screen.

12 What I'll do when I refer to files, I'll
13 just use the last five digits because they're all
14 distinct from each other.

15 And they had the FBI review those files,
16 and the FBI made a decision on what materials were
17 relevant or favorable to the defense that related to
18 the SNM Gang, and those were turned over to the U.S.
19 Attorney's Office for review and production.

20 THE COURT: Have you gotten a sense -- I
21 know you haven't seen all these files, but have you
22 gotten a sense from your discussions with the
23 Government as to how big these files are?

24 MR. CASTLE: I have no idea, Your Honor.

25 The problem -- so for these five files

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1 they've indicated that the FBI agents made a thorough
2 review and turned over materials to them. And I
3 believe the upshot of it is that the U.S. Attorneys
4 turned over all those materials to us. I believe
5 that's the case. But the memo only says that they
6 reviewed it, then produced. But I don't know whether
7 they produced everything the FBI identified as
8 relevant or favorable. The problem with that is --

9 THE COURT: Where do you get the
10 information -- maybe I just haven't reviewed it far
11 enough -- but where do you get the information that
12 the FBI did the initial review? Is that something
13 that was told to you orally or am I just missing it?

14 MR. CASTLE: The last paragraph of the
15 document that's up on the screen indicates that FBI
16 special agents -- and they're listed -- accompanied
17 the files to the U.S. Attorney's Office and conducted
18 a complete review of the files. So I believe that
19 sentence means that it was the agents who did the
20 complete review. And then all the reports pertaining
21 to the SNM Gang were turned over to the U.S.
22 Attorneys for their review.

23 THE COURT: Let's say that Mr. Beck gets up
24 here in a minute and says, Well, what happened is
25 that the FBI did review all these files, and said:

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1 Here's the universe of files that we have involving
2 SNM or SNM members, and they brought all those files
3 and brought them to Mr. Beck, and then Mr. Beck did
4 the review for Brady, Giglio, and Rule 16, would you
5 feel differently about their review?

6 MR. CASTLE: Yes. And I think that we
7 would have heard that -- in our motion to compel we
8 indicated that was a problem that the U.S. Attorneys
9 didn't do the personal review of the files. And in
10 their response they did not indicate that they did
11 that. So I believe that that won't be what's
12 represented, or either that or they missed an
13 opportunity to kind of head this train off at the
14 pass in their response.

15 The obligation for the U.S. Attorney's
16 Office to do that review is found not only in this
17 Court's ruling on October 4, 2016, but also in United
18 States Supreme Court precedent. I'll turn to this
19 Court's order first, which was -- the Court
20 indicated -- and I quote the October 4, 2016
21 transcript, page 111, lines 7 through 12, the
22 following: "I'm not comfortable with there not being
23 an Assistant U.S. Attorney putting their feet in the
24 shoes of the defendants and the defendants' counsel,
25 and being creative about how this information could

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1 possibly be used to benefit the defendant."

2 The Court's ruling is supported by the U.S.
3 Supreme Court case of Kyles versus Whitley, 514 U.S.
4 419, at page 438, where the U.S. Supreme Court
5 stated, and I quote, "Any argument for excusing a
6 prosecutor from disclosing what he does not happen to
7 know about boils down to a plea to substitute the
8 police for the prosecutor, and even for the courts
9 themselves, as the final arbiters of the government's
10 obligation to ensure fair trials."

11 So the upshot and the meaning of Kyles is
12 that we do not leave it to law enforcement to decide
13 what needs to be disclosed and what is relevant. And
14 there is a good reason for that. They don't
15 necessarily understand exactly what the parties have
16 been arguing, what the defenses are, what the
17 potential defenses are. They may not be even
18 familiar or extremely familiar with the
19 constitutional obligations. I noted that some of the
20 agents that did the review here are fairly new on the
21 case. They may not know the history. They may not
22 know the players.

23 And I think, as the Court has commented,
24 and all of us have observed, this is a very
25 complicated case. There are a lot of tendrils. And

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1 to understand how a particular item in a file might
2 be relevant, or might be favorable to a defendant,
3 that really falls upon the U.S. Attorney to make that
4 determination.

5 So the United States Supreme Court has
6 entrusted the U.S. Attorney's Office with a great
7 responsibility, and that is to make these
8 determinations. And I think, as the Kyles court
9 said, you know, it's the U.S. Attorney who decides
10 how close to tack to the wind, to make those fine
11 determinations of whether something should be
12 disclosed or not. So that's their responsibility,
13 they're given that power. And, of course, with that
14 power, is that very responsibility. So that's the
15 first problem that I see with the Government's
16 approach to this issue.

17 The second problem --

18 THE COURT: Why don't we take them one at a
19 time. Let me just -- if you don't have anything more
20 to say on the review process, why don't I hear from
21 the Government, and then I'll let you come back and
22 take up the other issues. Is there anybody else, any
23 other defendants that want to comment on this before
24 I hear from -- looks like Mr. Beck -- on the process
25 they used?

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1 All right. Mr. Beck.

2 MR. BECK: So I think that 302 report is
3 not how, perhaps, we would have written it. But we
4 don't write the 302s. What it says is that the files
5 were taken down to the Las Cruces branch of the U.S.
6 Attorneys' --

7 THE COURT: Just the complete files?

8 MR. BECK: The complete files. We all sat
9 there in the room and reviewed them. So --

10 THE COURT: And when you say "we" reviewed
11 them, you're talking about people from the United
12 States Attorney's Office?

13 MR. BECK: Right, yes, the three
14 prosecutors here.

15 THE COURT: All right.

16 MR. BECK: Two -- sorry, Mr. Castellano was
17 not there. Maria Armijo was.

18 THE COURT: So the five files that are on
19 the 302 that Mr. Burke had up there, attorneys have
20 been through all of it and made the determination as
21 to what to produce under Brady, Giglio, and Rule 16?

22 MR. BECK: That's correct.

23 THE COURT: Not the FBI?

24 MR. BECK: Right.

25 THE COURT: And, as far as you know, and

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1 you can say this with some due diligence, you
2 received all the materials that were in those five
3 files?

4 MR. BECK: Yes, I can represent that.

5 THE COURT: All right. Anything else on
6 that issue then, Mr. Beck?

7 MR. BECK: I think that's it. I think that
8 clears it up.

9 THE COURT: All right. Thank you, Mr.
10 Beck.

11 Mr. Burke -- I mean, Mr. Castle, does that
12 give you comfort, those representations?

13 MR. CASTLE: Yes, Your Honor, we would
14 accept the position of the Government.

15 In the future, if I'm in the middle of one
16 of these arguments, and we can cut it off at the
17 pass, I have no problem with anyone interrupting me.

18 Does the Court want me to go to the second
19 aspect?

20 THE COURT: Yes, let's go to -- unless you
21 have something else on that issue. Anybody else?
22 Everybody comfortable?

23 All right. Mr. Castle.

24 MR. CASTLE: There are four files, and in
25 addition to the four files that I'm going to talk

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1 about, in Document 360, we identified four separate
2 criminal proceedings against SNM Gang members that
3 happened over the last seven years. And from our
4 review of the materials provided to date, and also
5 the Government's responses to the motion to compel,
6 it appears that those four files -- out of those four
7 files, three of them have not been reviewed at all,
8 one was reviewed only cursorily. And then it doesn't
9 appear that the Government has looked at the four
10 criminal cases that were filed in this district
11 involving the SNM.

12 And so I'll go through those one by one.
13 And if the Court wants me to, I'll stop after each
14 one and then we can address it.

15 THE COURT: Let's do that. I think it will
16 help me to keep them straight.

17 MR. CASTLE: The first one is a file that
18 is referenced in the 302 that the Court just saw, and
19 it indicated that that particular file numbered 63435
20 was -- that a cursory review was done. And I don't
21 know -- the 302 says the cursory review was only done
22 by the FBI. It may very well be that it was done by
23 the U.S. Attorneys also. But a cursory review is
24 insufficient. And the reasoning that they gave to
25 only doing a cursory review is that the file itself

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1 was considered a Barrio Azteca file called Operation
2 Tar Pit. And the reason we believe this is a
3 relevant file to have more than a cursory review is
4 based upon the information contained in some
5 documents we found in discovery. This is the
6 beginning of a 302 that I'm displaying on the board
7 that talks about this particular file, 63435. The
8 Court can see it at the bottom of the --

9 THE COURT: Point that number.

10 MR. CASTLE: It's right there.

11 THE COURT: Okay.

12 MR. CASTLE: And when we go through the
13 302, this is essentially what it is, is a --

14 THE COURT: Is that what this, is a 302?

15 MR. CASTLE: It appears to be a 302. I
16 think it might indicate that up somewhere at the top.

17 But whatever it is, it's a report of an
18 interview they did with a CHS. And during that
19 interview -- I'll go to page 3 of that interview --
20 there is a discussion about my client, Bill Garcia.
21 And this CHS indicates that "Mr. Garcia was running
22 the line at Southern New Mexico Correctional Facility
23 when Frank Castillo and 'Looney' were killed." And
24 "Looney" is the nickname for the other victim in the
25 Counts 1 and 2 pair of charges. And the CHS says

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1 that the sanctioned hits would have had to have gone
2 through Mr. Garcia, and then he mentions some --
3 something about Edward Troup, which it doesn't
4 really -- we don't really understand why that got
5 brought up. It's in the same paragraph as this
6 discussion about the murders in 2001.

7 So, essentially, what I think happens, Your
8 Honor, is that when an informant talks to the
9 Government -- at least this is my experience. I
10 mean, I represented people that have gone in for
11 debriefings -- and they'll talk to them, not only
12 about the area that they're primarily there for, but
13 they ask them generally about anything else that they
14 might know about, and especially CHSs that come from
15 the prison facility, it would be expected that they
16 would talk to them about anything they might know
17 about various investigations. And so the
18 investigations interrelate.

19 And I think, as the Court saw on page 1,
20 the investigator that was doing this interview, one
21 of them is Special Agent Lance Roundy, which was one
22 of the main investigators in the 2001 murders, in the
23 early years of the various investigations in the 2001
24 murders. And I'll try to take my chubby little
25 finger here and show the Court where I'm talking

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1 about again.

2 So, Your Honor, I think that -- oh, I'm
3 sorry, was the Court done seeing --

4 THE COURT: I think, so yeah.

5 MR. CASTLE: When you have an indication
6 that there might be some crossover, which we have in
7 this document between various investigations, then
8 the Government is on notice that -- the U.S.
9 Attorney's Office is on notice that there might be
10 material in that file that may be relevant, and may
11 be favorable to the defense, or might be inculpatory,
12 for that matter. But it's certainly relevant. And
13 at that point it's incumbent upon the prosecution to
14 review that file.

15 I think all the case law indicates,
16 essentially, that defense doesn't have to point and
17 tell the Government where to look and how to look.
18 But it's certainly helpful.

19 In this case, we showed them the file
20 number and asked them to do a thorough review, and
21 they decided to do a cursory review. I don't think
22 that should give anyone confidence that that file
23 doesn't contain more material that is relevant or
24 helpful to the defense. That's my argument
25 concerning that particular file.

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1 THE COURT: All right. So I guess to put
2 the issue, your concern is two-fold; one, has it been
3 reviewed at all; and then, B, has Mr. Beck or an
4 attorney reviewed that file for Giglio, Brady, and
5 Rule 16 material?

6 MR. CASTLE: Yes.

7 THE COURT: Okay. All right. Mr. Beck?

8 MR. BECK: So I just want to point out why
9 we feel confident that we have at least met our
10 obligations. And so what happens is, the way we
11 perform this case, is we search the SNM files and
12 then we search all the FBI files, wherever they be,
13 for certain names, whether they be the defendants'
14 names, other SNM members' names, the SNM, their
15 monikers, things like that. So what happens is
16 sometimes we get sources from different documents.

17 So, for instance, if we look at this case,
18 we've been asked to review this file, 63435. When we
19 go down here to the other files that Mr. Castle was
20 pointing to, Substantive Case File number, you'll see
21 again 63435. Now, next to it you'll see 62017. If
22 we look at the report that Mr. Castle was showing
23 earlier, the files we reviewed, the first one is
24 62017.

25 THE COURT: So those are the same file?

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1 MR. BECK: Right. So what this document is
2 saying is that this document, filed in 63435, was
3 sent to two different files. It was sent to 62017,
4 the SNM file that we reviewed, but because this
5 particular source also had information about the
6 Barrio Azteca Gang, it was also sent to that case
7 file, the Barrio Azteca file. So this document
8 appears in two different files. And it looks like
9 the one that we sent out was from the Barrio Azteca
10 file.

11 So for these source reports -- and I think
12 that Mr. Castle -- I don't want to ruin the ending
13 here -- I think there are two files that are source
14 files. You have a file for the source, at least
15 that's the way they used to do it. And then, like
16 this document, where the information comes, it's
17 funneled into open investigations in those files.

18 THE COURT: Well, okay, so it looks to me
19 like what you're representing is that you've reviewed
20 62017, right?

21 MR. BECK: That's right.

22 THE COURT: But you have not reviewed
23 63435?

24 MR. BECK: That's right.

25 THE COURT: How big a file is it?

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1 MR. BECK: We don't know. We don't have
2 that file. It's my understanding that that file is
3 in Texas related to the Barrio Azteca Gang. So we
4 don't have that file. The same thing with the other
5 files that -- the other three files we're going to be
6 talking about. We don't have those files.

7 THE COURT: Your office never did an
8 investigation of that gang?

9 MR. BECK: I don't know. That
10 investigation is in Texas, not in New Mexico.

11 THE COURT: Is that a West Texas Gang? Is
12 that an El Paso gang? What is that gang?

13 MR. BECK: Yes, that's my understanding.
14 West Texas, El Paso.

15 THE COURT: So it's probably in the Western
16 District of Texas?

17 MS. ARMIJO: It is, Your Honor.

18 THE COURT: Probably in El Paso?

19 MS. ARMIJO: It's a huge file.

20 THE COURT: I'm sorry? It's a huge file?

21 MS. ARMIJO: And it's a rather extensive
22 investigation.

23 THE COURT: When you say "huge," you're
24 talking about what? What kind of numbers?

25 MS. ARMIJO: I believe they've done --

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1 Texas has done two RICOs that I believe have many
2 more defendants than our case. And it's been pending
3 for quite some time. So I'm sure it's quite
4 voluminous.

5 THE COURT: What judge has it?

6 MS. ARMIJO: I don't remember.

7 THE COURT: They all look alike, right?

8 MS. HARBOUR-VALDEZ: Your Honor, Judge
9 Cardone had the one that I was involved in.

10 THE COURT: Okay. Is it still pending,
11 still going?

12 MR. BENJAMIN: Your Honor, I just left that
13 matter. That matter has been over the course of 2010
14 to today. So it's not this. There is two defendants
15 pending for the last year that I was involved in in
16 that case. It's a piecemeal. And there was a 2008
17 case before that that related to that case. And that
18 case, once again, was a piecemeal case. I believe
19 the 2010 case resulted in one trial.

20 I'm not intending to interrupt, Mr. Beck,
21 Your Honor, so I apologize.

22 MR. BECK: Oh, no need. I think it's --

23 THE COURT: So it's got two people left?

24 MR. BENJAMIN: No, no, no. It's piecemeal.
25 I was involved in the last year, Your Honor. And

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1 there were two defendants that were pending during
2 that year. It's just kind of been extraditing them
3 one by one.

4 THE COURT: Oh, they didn't bring a
5 30-defendant case, they'd just bring two at a time?

6 MR. BENJAMIN: It is not this, Your Honor.

7 THE COURT: Okay. All right.

8 MR. BECK: And so, I guess the reason that
9 I think Mr. Castle said we made a conscious decision
10 not to review these files is that we feel confident
11 we have the files related to SNM, SNM members, we
12 understand our obligations. And I think as the Court
13 found, rightly so, last October, in the decision Mr.
14 Castle was reading from -- the March memorandum
15 opinion and order -- that beyond that, beyond these
16 SNM files right now, is a fishing expedition. And I
17 think that's the right conclusion, and we stand
18 behind that today, that there are certainly lots of
19 other files out there in the FBI. And they are, I
20 think, in the United States' possession, or in the
21 federal government's possession.

22 And so this case, just like any other case
23 that the FBI, the DEA, you know, the ATF takes on,
24 there is certainly a certain risk out there that
25 there is some document that references the defendant

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1 in the Government's possession that didn't make it
2 into the United States Attorney's hands, didn't make
3 it into the case file. That's a risk in this case,
4 just like it is in other cases.

5 The FBI, to rebut that, places different
6 documents in multiple files. And that's what's
7 happened here. So that's why the United States made
8 this conscious decision. We recognized there is a
9 risk. There always is a risk, but we feel it's very
10 small in this case, given the search that we've done
11 through all the SNM files.

12 THE COURT: All right. Thank you, Mr.
13 Beck.

14 Mr. Castle, did that give you any
15 information you didn't have before you got up this
16 morning?

17 MR. CASTLE: It's more information, but it
18 doesn't give me any more comfort.

19 THE COURT: Okay.

20 MR. CASTLE: And I'll tell the Court why.
21 When we were here last -- I think my pages got out of
22 the order, Your Honor. If I could have a second.

23 THE COURT: Certainly.

24 MR. CASTLE: When we were last arguing this
25 issue in October, the issue came up that there was a

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1 rival gang to the SNM, by the name of Los Carnales,
2 and that because they were rival gangs, there would
3 be potential that there would be a cross-pollination
4 of reports that were relevant to the SNM Gang in a
5 particular Los Carnales investigation. And the Court
6 indicated that, if we identify a file that we believe
7 might have this possibility of cross-pollination of
8 reports, that the Government was to review that file
9 for any discovery.

10 Well, the Barrio Azteca organization has
11 been identified by the FBI as a rival organization to
12 the SNM. And because I didn't know this argument was
13 coming up, I don't have this in paper form, but I
14 would reference the Government to a -- on the 28th of
15 April, 2011, the Federal Bureau of Investigation
16 produced a situational information report. And I'd
17 invite Mr. Beck -- this is in discovery, if he wants
18 to view over my shoulder. And in that report, it was
19 titled, "Identification of Syndicato de Nuevo
20 Mexico/SNM membership requirements." And in that
21 report it indicates that the Barrio Azteca is a rival
22 gang to the SNM. And so --

23 THE COURT: Where are they going to be --
24 educate me a little bit. Where are they going to be
25 a rival gang? Is there some prison in New Mexico

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1 that contains both gangs?

2 MR. CASTLE: It indicates in this report
3 that it's, "As of February 2011, the SNM leadership
4 at the Southern New Mexico Correctional Facility,"
5 which is the facility where these two murders took
6 place, attempted to align with the Sinaloa Cartel.
7 And the Sinaloa Cartel is aligned with Barrio Azteca.
8 And it says the SNM, in return, allegedly would
9 allegedly kill Barrio Azteca members on behalf of the
10 Sinaloa. So what they're talking about is, they're
11 linking the SNM with Barrio Azteca in the very
12 facility that we're talking about.

13 THE COURT: And where did you get this
14 document that you're referencing? Was this in
15 production in this case?

16 MR. CASTLE: It doesn't have a Bates stamp,
17 Your Honor. And so what I -- frankly, what I was
18 doing is a search on my computer for Barrio Azteca,
19 and this popped up. I'm fairly certain that this is
20 out of this case, because this is a memo for the
21 Albuquerque Division of the FBI, and it's an
22 unclassified law enforcement document. So it might
23 have been in our investigation; it might have been in
24 some other form, but --

25 THE COURT: All right. Anything else you

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1 want to say on that topic?

2 MR. CASTLE: No, Your Honor.

3 THE COURT: Anybody else? Any other
4 defendant want to comment on this topic?

5 Let me ask you, Mr. Beck, if you have the
6 answers to these questions. Let me ask you about
7 this file. And if I'm impinging on work product,
8 then you can tell me you'd prefer not to answer the
9 question. But let's say in this file -- let's say in
10 this case, do y'all have all the documents on a
11 computer system? If I was in a civil case with
12 40,000 documents, I'd expect Ms. Wild to have every
13 one of them on a computer database, and I could
14 probably search different things to get ready for
15 different depositions, cross-examination, that sort
16 of thing. Is this file on that sort of database?

17 MR. BECK: It is in an electronic database.

18 THE COURT: Let me ask, then, if you're
19 doing it that way -- and that's pretty standard for
20 everybody getting ready for trial -- is it likely the
21 Western District of Texas would have it the same way?
22 And then, you can see my next question is: Without
23 you having to manually get all these documents and
24 review every one of them, could you ask your
25 colleague to do some limited word hits, and see what

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1 comes up as a way of seeing if there is anything in
2 that file that is related to SNM?

3 MR. BECK: That's how these documents came
4 to be produced in this case. That's what happened,
5 is that through the -- so, to view it, I would have
6 to sit at a desk at the FBI that has access to the
7 file. I can't view it from my computer, I can't view
8 it from here. I would have to be at the FBI
9 reviewing the pages. The way that you search through
10 that system, it's my understanding -- I don't
11 think -- I mean, I don't think I'm giving up anything
12 there -- but it's my understanding, just as you said,
13 you can do a word search. And so when the word
14 search was done for all the defendants, for SNM, for
15 Syndicato de Nuevo Mexico, all the terms related to
16 this case, that's where sometimes these documents
17 came up and where duplicates came up.

18 THE COURT: So they were coming out of --
19 were they coming out of -- was this done for file
20 63435?

21 MR. BECK: Yes, it was done -- I mean, it
22 was more robust than that -- it was done across the
23 FBI. So files from 63435 -- if I'm saying that
24 right -- the number that you just said -- files came
25 down from that, documents --

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1 THE COURT: In other words, you have sort
2 of -- I'll call it a Westlaw/Lexis sort of system,
3 where the FBI can plug in every 302 that's been
4 dumped into the system and do a massive word search?

5 MR. BECK: Yes, that's my understanding,
6 and I think that's right.

7 THE COURT: Now, it's typical in a civil
8 case, where we're trying to use either algorithms or
9 some of the more sophisticated programs to substitute
10 for paralegals and young associates going through
11 massive amounts of materials, to have a fairly robust
12 sharing of information about the protocols being used
13 so that we can dispense with a paper-by-paper or
14 page-by-page review, and just rely upon what I think
15 are increasingly reliable search techniques and
16 search engines. Would you be willing to share with
17 the defendants the search terms that you used for
18 63435, which I understand probably is not going to be
19 just limited to that; it's going to be the search
20 terms that you used?

21 MR. BECK: Right. Hold on one second, Your
22 Honor.

23 (A discussion was held off the record.)

24 MR. BECK: Yes, we're comfortable with
25 that, Your Honor. And again, it's not -- we don't

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1 search a case file. We search the FBI, and then it
2 comes down from the different case files.

3 THE COURT: I understand.

4 MR. BECK: We're happy to share the search
5 terms we used with the defense team.

6 And I'm guessing where you're going next,
7 if there is any additions or anything else that they
8 would like us to add, we will certainly consider
9 doing that, and searching those additional terms for
10 them, if that's where you're going.

11 THE COURT: That was where I was going.

12 Thank you, Mr. Beck.

13 Mr. Castle, that seems to me to be a good
14 modern approach to trying to make sure that you have
15 the information. Any flaws you see with where I'm
16 going?

17 MR. CASTLE: Well, I think it covers some
18 of the gap, but not all of it. Now, I'll explain
19 why. Just going back to the original report. This
20 was done because they did a search for the name
21 Edward Troup. And so that revealed this file number.

22 THE COURT: So you know some of the search
23 terms they're actually using?

24 MR. CASTLE: Some of them. And, for
25 example, they don't use Mr. Troup's nickname of

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1 "Guero." They did a search under Billy Garcia, but
2 not under the name "Wild Bill." So we can probably
3 fill in some of those gaps with that.

4 But we have to understand to some extent
5 the history of what's gone on here. When this case
6 started, when we got the discovery, they did not
7 review the five files that produced over 1,000 pages'
8 worth of relevant material already. So we have to
9 understand there is a gap here, and there has been a
10 hole here that needs to be filled.

11 And so I think last time we did talk --

12 THE COURT: Let's see what Mr. Beck says.
13 You said you didn't mind being interrupted. Let's
14 see what he says. Mr. Beck.

15 MR. BECK: So it's my understanding that
16 the way this search was done is we did search "Wild
17 Bill" and "Guero." Guero, I think everyone agrees is
18 a common moniker. So if you search "Guero," I don't
19 think anyone wants to see the number of documents
20 that would come up. But the FBI searched
21 "Guero/SNM," so that they would get documents that
22 tied "Guero" or "Little Guero" to the SNM. So that
23 is a caution that -- I can't guess the number of
24 documents that would come up if we looked through
25 just "Guero" by itself. So we did search those

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1 monikers as well.

2 MR. CASTLE: If I could just -- I'd like to
3 give the Court an analogy. When I've been doing some
4 research online on case law that Your Honor has
5 written on an issue such as Brady, I could put Your
6 Honor's name into the search engine, and I can find a
7 page with your name on it. But I have to then review
8 the whole case to understand what is relevant.

9 And what they're talking about is: We'll
10 give you the page where the hit shows, with Edward
11 Troup. But to me, what that tells them really is
12 that's a file. Now, when you do that, you see a file
13 number, that tells you that that's a file you need to
14 review, because they've discussed here the 2001
15 murders. And what if in that file there is an
16 informant who said it was somebody else who did the
17 murders? That wouldn't show up on a search for
18 Edward Troup or Billy Garcia, because it would show
19 someone else's name.

20 So just like a Westlaw search, I think once
21 the FBI and the Government hits on a file that has
22 relevant material, that triggers an obligation to
23 review that file to see if it contains other
24 information that is relevant.

25 And to give the Court another example of

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1 this: If we go right back to this one -- same
2 document, this CHS gives this report, and there might
3 be other material in this file about the CHS that
4 says -- that shows that the informant is credible or
5 incredible. There might be Giglio material in that
6 file concerning the informant. And that's not going
7 to show up in any search of this. So that's the
8 problem with the proposal that they have.

9 THE COURT: Well -- go ahead, Mr. Beck.

10 MR. BECK: I was going to say, I think
11 there is a distinction. I think, as that report
12 shows, when a name comes up from another file, we
13 take the entire report. And so I think that is
14 analogous to reading Your Honor's entire decision. I
15 think, to go and look through that whole file page by
16 page, would be more like, if we see something in Your
17 Honor's opinions that's helpful, then we review all
18 the District of New Mexico's decisions for the entire
19 year to see if there is something inconsistent.

20 If that source -- now, going to the next
21 argument, if that source has something in the file
22 that makes them an incredible witness, if we're using
23 them as a witness, if we're using that information,
24 then that's helpful, and we need to know that. But
25 for a lot of these people who will come out in the CI

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1 disclosures, and a lot of these sources, we don't
2 know anything about them, other than that they gave a
3 certain document, right? So we can't -- I mean, we
4 can't bring that in. There is hearsay rules and
5 confrontation clause rules that prevent that. So I
6 think that's -- I think that reading the entire
7 decision is a bad analogy for what we're being asked.

8 THE COURT: Let me make sure I understand
9 the analogy. You're saying that when you get a
10 hit -- let's say you get one of my 151 pages on
11 motion to sever, you're going to look at my name,
12 and -- somewhere on page 49, and then you kind of
13 look at it, and you make a determination. You know,
14 if I understand "Guero," that's slang for a pale
15 person, pale one. You look at it and you say it
16 doesn't have anything to do with SNM. This is Jim
17 Browning's opinion about Federal Rule of Civil
18 Procedure 15(a) and amendments to the complaint. You
19 make a professional judgment this doesn't have
20 anything to do with it, and you're not reading the
21 whole opinion? Is that the analogy?

22 MR. BECK: No, I don't think so. What
23 we've done in this case is, if we find the 151-page
24 motion to sever, we produce that document. Now,
25 we --

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1 THE COURT: You just turn over the
2 document.

3 MR. BECK: Right. Right. Unless --

4 THE COURT: But you're not going and
5 reading the whole FBI file that contained that
6 document?

7 MR. BECK: Right. That's right.

8 And I don't want the Court to misunderstand
9 that we did do a search for "Guero," and looked
10 through every hit on that to see if it was Mr. Troup.

11 THE COURT: Right. You did "Wild Bill,"
12 and you did "Billy," and "Bill"?

13 MR. BECK: I can't make those
14 representations now, but I can represent --

15 THE COURT: It's something like that?

16 MR. BECK: Something like that. And we
17 will turn that list over to the defense.

18 THE COURT: All right. Does that help you
19 at all?

20 MR. CASTLE: It helps us. But again --

21 THE COURT: You still think they ought to
22 review the whole file?

23 MR. CASTLE: Yes. I mean, this is an
24 investigation of an organization that they've been
25 doing for 15 years. And they have a number of files.

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1 And the way it's proceeded so far is the Government
2 waits until we identify a file before they have
3 either the FBI or themselves review it. And that's
4 not the way it's supposed to be.

5 THE COURT: Well, but in fairness -- I
6 mean, we know they have a Brady obligation, but there
7 is a give and take. I mean, defendants always come
8 in in any case -- sometimes it's plaintiffs in my
9 civil cases, they're saying: Did you look here, you
10 know. And defendant said, No, I didn't think to look
11 there. And they look there, and there will either
12 be -- so I mean, there is a give and take in
13 discovery. That's what we're doing here. I'm trying
14 to massage this thing to get your hands on the
15 documents you need to defend these defendants. But
16 at the same time I'm trying to be realistic about it.

17 I think the Government has presented a good
18 solution. I think, if you got more hits and
19 searches, give it to them. It looks like they're
20 giving you documents. It seems to me that they're
21 taking their obligation seriously. It may not be
22 exactly what you want, but they're taking it
23 seriously. And they have to make some professional
24 adjustment -- everybody does in any case -- the civil
25 defendants, or the Government in the criminal cases,

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1 to say: We're going to cut it off here, and we're
2 going to go there. And it seems like they put in
3 some safeguards, primarily you and the other defense
4 lawyers here to say, Well, have you looked here?

5 So I think I'm going to live with the
6 Government's proposal. And you can go back with some
7 search terms. Mr. Beck, you'll put a letter together
8 telling them what search terms you used. And let's
9 continue to rock along here before we start requiring
10 just a wholesale review of documents that I think are
11 going to probably produce very marginal materials
12 that are beneficial to the case. It seems to me
13 we've got a good check and balance in place here.
14 And I've got to rely -- we all got to rely to a
15 certain degree on the Government's taking seriously
16 their Brady obligations. And it seems to me they're
17 doing it.

18 All right. What else, Mr. Castle?

19 MR. CASTLE: Your Honor, the second one is
20 concerning a file with the last five numbers of
21 61844. I'm going to show the Court a document and
22 point out the file number. Once again, it's right
23 here. And it's a linked file with a subfile, which
24 the Government has reviewed, which is titled "SNM."
25 This is a report of another source of information,

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1 and an identified source. It talks about a number of
2 the defendants in this case, such as Mr. Baca. And
3 on page 2, my client is discussed by this source of
4 information. I'm trying to find -- yes, Billy
5 Garcia. And so it's our position that they should
6 review that file. And I'm not sure -- perhaps, I
7 should stop now, and indicate whether they've
8 identified whether that file is something unrelated
9 to the SNM at all, or the 2001 murders?

10 THE COURT: This is 62017?

11 MR. CASTLE: No, this is 61844. And in the
12 original file that we showed the Court they did not
13 review that file according to this 302.

14 THE COURT: Mr. Beck.

15 MR. BECK: Again, just above that 61844A,
16 immediately above it is 57713, case ID, and the 302
17 that shows which files we did put our hands through
18 includes 57713. So again, this, and the primary case
19 up at the top is 57713-SNM. So again, this file came
20 from the SNM file. It may link up, again, with
21 another file below there. So again, this is another
22 example of a document that went to two different
23 files. Two different documents out there; one of
24 them went to 57713, which we hand reviewed; one of
25 them went to 61844, which we did not review.

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1 THE COURT: Okay. So this one, then, is
2 electronically searched then?

3 MR. BECK: Right. Yes, this is the same
4 status as the one we just talked about.

5 THE COURT: Do you know off the top of your
6 head -- we have a little better sense of that other
7 file. I don't have the number up in front of me.
8 But we had a little better sense to what gang it was
9 referring to. Do we have any sense to what this one
10 is?

11 MR. BECK: That's not referring to a gang.
12 That's my understanding that's referring to the
13 source. So the way that I understand the FBI used to
14 do these things is the source would have a file. So
15 that is the source's file. I don't have any idea how
16 big that is.

17 THE COURT: So you've got a CHS and he's
18 doing something in SNM, but he also might be doing
19 something else and giving you information, so you
20 send it to that file as well?

21 MR. BECK: Right. So when you have a
22 source, the way they used to do it -- they probably
23 still do some modification of this -- but in this
24 case, that source had a file. If they provided
25 information that related to another open file in the

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1 FBI, a document was placed in their file, a document
2 was placed in that file. So this is an example like
3 that.

4 THE COURT: So this file has been
5 electronically searched for the same code words that
6 you're going to --

7 MR. BECK: When we searched the FBI files,
8 this document came up.

9 THE COURT: Okay. Mr. Castle.

10 MR. CASTLE: Your Honor, I accept the
11 Government's representation that they have a separate
12 file for these particular CHSs. But I think they're
13 under a duty to search the CHSs' files. Now, I don't
14 know if the CHS is going to be used in this case. I
15 have no idea. But certainly with regards to CHSs
16 that are going to be used in this case, they need to
17 go through their personal -- that file. Because, if
18 they gave false information in a different
19 investigation, that's Giglio. If they had --

20 THE COURT: Let's see what Mr. Beck is
21 going to say on this, if you don't mind being
22 interrupted.

23 MR. BECK: I mean, I was going to say we
24 understand our Giglio obligations as they relate to
25 that. We know that witnesses that we have previous

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1 inconsistent statements are Giglio. We know we have
2 an obligation to know that information, if it's in
3 the United States' possession. So we haven't looked
4 at this file. That probably tells everyone that
5 we're not using this person as a witness.

6 THE COURT: Not using this guy.

7 MR. BECK: So --

8 THE COURT: All right. Anything else on
9 that one, Mr. Castle?

10 MR. CASTLE: The only thing I would note is
11 that this document came up because it was searched
12 under Mr. Garcia's name. And it indicated -- I think
13 what this means is that these files were the primary
14 case file for an investigation of Mr. Garcia.

15 THE COURT: So you have a little sense as
16 the search terms they're using?

17 MR. CASTLE: Yes.

18 THE COURT: Mr. Beck.

19 MR. BECK: That's not what "primary case"
20 means. I don't know what it means, but it doesn't
21 mean that. And I will say that, again, I think we've
22 heard numerous times that people have found
23 productions of the same discovery multiple times at
24 different Bates numbers. And this is an example of
25 why. Because when we did the search with the

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1 monikers, we produced that information, and the
2 names, we produced that information. Then, as Your
3 Honor said, the checks and balances, they asked to us
4 go back and search those files. We did search those
5 files, those hand files. So that's why this document
6 is likely to have been produced twice, because it was
7 produced with the Billy Garcia search on the top.
8 Then, when we went back through 62017, it was
9 produced again from that source file. So that's why
10 I'm saying the United States feels comfortable and
11 confident with the process we've worked out.

12 THE COURT: All right. Anything else on
13 that one, Mr. Castle?

14 MR. CASTLE: No.

15 THE COURT: All right.

16 MR. CASTLE: Your Honor, the next one is
17 59388. I'm pointing to the case number, 59388. This
18 is titled, "Full investigation." And the document
19 title is "The Syndicate of New Mexico uses murders
20 and assaults," dated July 21, 2005. It talks
21 considerably -- it's an individual who has agreed to
22 testify provided the following information. And then
23 it goes down and talks about various individuals that
24 are indicted in this case, and it goes on to page 2
25 of that.

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1 Looking back at the 302, the file, which is
2 59388, has not been reviewed by the Government. So
3 based upon our review of the original 302 --

4 MR. BECK: I think if we go back, you'll
5 see it's the second number on that 302.

6 THE COURT: Which one, Mr. Beck?

7 MR. CASTLE: Oh, I'm wrong. Apparently,
8 they did search it, Your Honor. My eyes failed me.
9 So we can move on. We withdraw the claim of 59388.

10 The next one is file number 54711, which
11 unless my eyes fail me again, is not on the 302. But
12 I will show the Court what 54711 is. This is 54711.
13 This is a 302 contained within that file. And this
14 is -- in this 302 they're questioning people about
15 the deaths of inmates, Frank Castillo and Rolando
16 Garza, at the Southern New Mexico Correctional
17 Facility. So that's what the purpose of this 302 and
18 investigation is. That's the exact case that we're
19 talking about in Counts 1 and 2.

20 MR. BECK: Scroll that down a little bit.

21 MR. CASTLE: Judge, I don't mean to be
22 confusing the Court.

23 THE COURT: No, that's fine.

24 MR. CASTLE: And it goes on for several
25 pages, where it identifies various individuals, such

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1 as one defendant, Allen Patterson; an alternate
2 suspect in this case by the name of Ray Molina; one
3 of the defendants who has recently pled out, Eugene
4 Martinez. It discusses additional inmate interviews
5 in the Castillo and Garza murders. And goes on, Your
6 Honor. It talks about various defendants,
7 Mr. DeLeon, Mr. Troup, and again Mr. Gallegos.
8 That's not the only document.

9 THE COURT: Let's do this: We're beginning
10 to have defendants that need to go use the restroom.
11 If you don't mind, let's take a break here and let
12 everybody do what they've got to do, and come back in
13 about 15 minutes. We're getting pretty close to our
14 morning break anyway. We'll be in recess for 15
15 minutes.

16 (The Court stood in recess from 10:30 to
17 10:53 a.m.)

18 THE COURT: All right. Do we have
19 everybody? Look around. Everybody back in?

20 All right. Mr. Castle.

21 MR. CASTLE: Your Honor, the break was
22 timely because we resolved the remaining matter.

23 THE COURT: Okay.

24 MR. CASTLE: In regard to file 54711, the
25 Government thinks they may have done a full review of

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1 that. And my review of -- and I was wrong, it was
2 like 3,000 pages that we were provided. There were a
3 number of documents from that file that we received
4 in discovery. So what they're going to do is between
5 now and May 30, make sure that they did a full
6 review. If they didn't, they'll do the full review
7 and produce accordingly. And if they already did do
8 the review, they'll let us know. And we accept that
9 resolution.

10 THE COURT: Okay.

11 MR. CASTLE: The other aspect is the
12 Government also is going to get us that list of names
13 by May 30. They might have earlier. But they have a
14 number of disclosure obligations in the next couple
15 of weeks. And so we thought that was appropriate.
16 And then we'll get together and try to give them a
17 comprehensive list among all the defendants. And
18 I'll take it on myself to collate, essentially, and
19 remove duplicates of various counsel's requests.

20 THE COURT: All right.

21 MR. CASTLE: And I think that resolves the
22 issues that I have.

23 THE COURT: All right. Does that resolve
24 everything in your motion?

25 MR. CASTLE: Yes.

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1 MR. BECK: Yes, Your Honor.

2 THE COURT: All right. And anybody else on
3 those motions, those issues?

4 All right. Thank you, Mr. Castle.

5 I think that, then, ends the motions that
6 we have for today.

7 You just let Mr. Castle in, Ms. Johnson?

8 MS. JOHNSON: Oh, yes, Your Honor.

9 THE COURT: All right. Let me ask this:
10 Is there anything else we need to discuss before we
11 end this case? I have a detention hearing.

12 Mr. Creecy? Ms. Harbour-Valdez?

13 MR. CREECY: Yes, Your Honor. On behalf of
14 Ms. Rodriguez, we were brought into this case in the
15 second superseding indictment in March. And since
16 that time, and just over the last week, we have been
17 working with the United States Attorneys to get
18 discovery in this case. We've just started receiving
19 a little bit of discovery this week. And we
20 appreciate efforts of the United States Attorneys
21 working with us in order to do that. We have a very
22 small amount of discovery that we received so far.

23 And I just wanted to inform the Court that
24 as we review this, we might have to file motions on
25 behalf of Ms. Rodriguez concerning that discovery, or

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1 concerning events in this case. While we don't want
2 to duplicate what has been done in the past -- and
3 we'll definitely review the Court's opinion on other
4 motions that have been filed -- we just wanted to
5 alert the Court that we do have that issue that might
6 be looming, that we might have to file other motions
7 on behalf of Ms. Rodriguez.

8 THE COURT: All right. Well -- and a lot
9 of stuff has been done orally. You've been with me
10 long enough in a lot of cases, but you also have been
11 witnessing this morning -- and I know Mr. Winder was
12 last week -- a lot is being done like we did this
13 morning, a lot of hands-on sort of orders and
14 agreements and things like that. So you may have to
15 review some transcripts as well to get a good feel
16 for exactly what discovery is being required, and
17 what I haven't been requiring, so to try to get a
18 feel for it. But I know you're doing that.

19 MR. CREECY: Yes, Your Honor. If we have
20 any unique issues for Ms. Rodriguez, which might be a
21 little different than other defendants, then that's
22 what we'll be looking at. We'll try not to duplicate
23 anything that's been done with other defendants.

24 Thank you, Your Honor.

25 THE COURT: I appreciate it, Mr. Creecy.

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1 Thank you, Mr. Creecy.

2 Ms. Harbour-Valdez.

3 MS. HARBOUR-VALDEZ: Your Honor, we would
4 like the Court to reconsider the motion for
5 continuance that was filed on behalf of the Counts 1
6 through 5 and 13 through 16. The Court may recall
7 that all of the defendants were in agreement with
8 that continuance, and the Government would not oppose
9 it. But we had one defendant who was asserting his
10 speedy trial rights. It appears that that one
11 defendant's case has been worked out this week. And
12 we would like the Court to reconsider -- I know you
13 denied it without prejudice. I don't know if you
14 want us to do any additional briefing on it. But
15 since you opened the door to hear other things, we
16 would like the Court's thoughts on that.

17 THE COURT: You don't want all my thoughts,
18 do you?

19 MS. HARBOUR-VALDEZ: Probably not.

20 THE COURT: Let me ask the Government, and
21 let me ask, Ms. Johnson: Is your deal -- I know that
22 you've got some details to work out -- is your
23 agreement done enough that I can rely on it for
24 anything that Ms. Harbour-Valdez is asking me to
25 consider? I mean, can I consider it that Mr.

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1 Gonzalez is out of the case, and I can rely on that
2 for making scheduling decisions?

3 Let me ask you first, Ms. Armijo?

4 MS. ARMIJO: Yes, Your Honor, I believe so.
5 Obviously, Ms. Johnson would be in the best position.
6 But we believe so. We provided her with a plea
7 agreement, and we're just working out some minor
8 details on wording. But I believe you can do this.

9 THE COURT: Ms. Johnson?

10 MS. JOHNSON: Yes, Your Honor. There are
11 some minor details -- well, actually not minor for
12 Mr. Gonzalez. We've requested some change in some of
13 the language, which if they are not changed as
14 requested, those would be a deal-breaker.

15 And just -- Your Honor, may I confer with
16 my client for just one second?

17 THE COURT: Yeah. And I guess the question
18 I probably would ask you is: Am I probably ever
19 going to see you again asserting Speedy Trial Act
20 rights in this case?

21 MS. JOHNSON: You could be.

22 THE COURT: Can I rely upon that to
23 schedule with the rest of the folks, or am I -- do
24 you think I might see you again? I guess the reason
25 is, I'm wondering is if what I need to do with

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1 Ms. Harbour-Valdez's request is wait. I mean, I
2 think I've said that if everybody is on board to move
3 this trial, that's going to probably be very
4 influential on me. I do worry about the ripple
5 effects on the other cases and other defendants in
6 the other cases. But nonetheless, I may have to
7 solve those problems by not honoring the Government's
8 request to try one case before the other. But --

9 MS. JOHNSON: May I confer with my client?

10 THE COURT: Certainly. Take your time.

11 (A discussion was held off the record.)

12 THE COURT: All right. Let's go back into
13 order.

14 Ms. Johnson, do you have something to say
15 to the Court?

16 MS. JOHNSON: Yes, Your Honor. We do have
17 an agreement now. So the Government is going to
18 finalize it, send it over, and we'll get it
19 scheduled.

20 THE COURT: All right. So I can rely upon
21 you not to be present at any more of these hearings
22 and assert your Speedy Trial Act rights?

23 MS. JOHNSON: Not in this case, Your Honor.

24 THE COURT: Not in this case, okay. I
25 don't want to kick you out of federal court.

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1 MS. JOHNSON: Another case, possibly.

2 THE COURT: All right. Thank you, Ms.
3 Johnson.

4 Ms. Armijo? Mr. Castellano? Is that a
5 fair representation?

6 MS. ARMIJO: Yes, Your Honor, it is.

7 THE COURT: All right. What's your
8 thoughts on Ms. Harbour-Valdez' renewed motion to
9 continue the trial?

10 MS. ARMIJO: We don't have any objection as
11 long as the deadlines that have passed, some of them
12 can be reinstated. The only issue we have is -- of
13 course, we've always said that we want the Baca case
14 to go last. And I believe there was one hold-out in
15 that case -- they're not here today -- 1613. But I
16 believe there may be some other attorneys here that
17 have more insight on that. And it was just one
18 person that was kind of holding out. But I've been
19 told by counsel here that they think that that person
20 will agree to a continuance. And if that's the case,
21 then everything can be shifted, Your Honor.

22 And I believe, for the short term at least,
23 I think we can get the July one off the table. We
24 can at least push that one down a little bit more.

25 THE COURT: Now, Baca -- we've got the

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1 second half of DeLeon, and we've got Baca all set for
2 November -- no? When do we have Baca set?

3 Well, let me ask you, Ms. Harbour-Valdez,
4 take the first condition first, put aside any
5 problems with Baca.

6 (A discussion was held off the record.)

7 THE COURT: So my memory is the second half
8 of DeLeon, and then the Baca are both set for
9 November 6. Putting that issue aside, what that
10 hold-out in Baca -- his position on that is -- on the
11 first set of conditions about the passed deadlines,
12 and those sort of things, is that something that the
13 defendants in DeLeon would agree with?

14 MS. HARBOUR-VALDEZ: Yes, Your Honor. We
15 anticipated a new scheduling order would be submitted
16 for the Court's approval.

17 THE COURT: And that's what you're
18 basically saying as well, Ms. Armijo?

19 MS. ARMIJO: Yes, Your Honor.

20 THE COURT: Okay. Well, why don't we do
21 this: I'm a little reluctant, because I have -- I do
22 have some memory of that person in Baca -- was it Mr.
23 Acton -- I think it was Mr. Acton saying: I'll agree
24 to this continuance, but I'm not going to agree to
25 another because of my client's Speedy Trial Act

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1 rights. I'm a little reluctant to run roughshod over
2 them. I think y'all probably need to sit down with
3 him and see -- until you talk to him and see if he
4 agrees. So I'm not going to grant it today.

5 And what I'm about to say, I'm going to do
6 for my own self-preservation. I'll take another
7 motion to continue. I'll grant it if everybody in
8 this case is onboard, and if everybody in the other
9 case understands the ripple effect. If they can't
10 agree on the ripple effect -- you know, I know the
11 Government wants to try this case before they try
12 Baca. But I'm not -- that's the Government's
13 preference. I'm not necessarily locked in on that.
14 The defendants may prefer that, too. And I
15 understand that.

16 So I'll go along with -- probably, if
17 everybody wants to go along. But I'm not just going
18 to sign a motion to continue. Y'all have had some
19 problems working out scheduling orders. And so I'm
20 going to need to have a motion to continue with an
21 agreed scheduling order. And if you can't agree on
22 the scheduling order, let's get that front and
23 center; we'll get back together, and I'll hammer it
24 out. But we've had so much difficulty with
25 scheduling orders. Maybe if everybody wants the

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1 continuance, they'll work harder together to get the
2 scheduling order put in place. So from a
3 self-preservation standpoint, I'll make that
4 requirement as well.

5 All right. Anything else I can do on that
6 today, Ms. Harbour-Valdez?

7 MS. HARBOUR-VALDEZ: No. Thank you, your
8 Honor. I'll take the lead on working with the
9 Government on that scheduling order.

10 THE COURT: All right. Thank you.

11 Mr. Davis.

12 MR. DAVIS: Judge, I would like a bit of a
13 clarification. Because based on the Court's ruling,
14 it's my understanding that when the Court granted the
15 severance, the Government indicated that they were
16 going to try the Gallegos group first, and then the
17 Counts 6 through 13 people would go thereafter.

18 The Court now has continued the Gallegos
19 group July trial, and you indicated that. And I
20 guess now the trial has been rescheduled for November
21 2. It was my understanding, in accordance with the
22 Government's wishes, the Gallegos group trial would
23 go first on November 2. But I'm not sure that that's
24 what I heard from the Court; that the Court is now
25 inclined to try the Counts 6 through 13 group in

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1 November?

2 THE COURT: Well, all we've done right now
3 is -- all that we have -- we may be barreling towards
4 something like you're saying. But right now we still
5 have a July 10th on what you're calling the Gallegos
6 group. I call it the first batch, the first counts
7 with the later count. So that's still on July 10th.
8 It does look like there may be a continuance of that.
9 The Government has expressed, I think, a preference
10 to trying the first half of the DeLeon first, and
11 then those later date counts at a later date.

12 I think it would be hard to pick a jury,
13 and I'm not sure anybody would want to at the same
14 time, do them back to back. That would have a jury
15 hanging out eight weeks, first estimate. I'm not
16 sure that's anybody's advantage. If we're going to
17 sever the trial, I'm not sure it's probably a good
18 idea to have all the voir dire taking place with the
19 same venire. So I think we're looking at two fairly
20 separate trials.

21 MR. DAVIS: I think that's what all of us
22 anticipated. We're just trying to -- I mean,
23 obviously, November of this year gives us a bit of
24 headway. But, obviously, the sooner that either of
25 the two groups know for a fact that we'll be up to

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1 bat in November, that would be helpful. Obviously,
2 we may have concerns to raise about the November
3 trial, either group may have, I don't know,
4 particularly in light of the 1613 issues. I just
5 don't know, Judge. But I just wanted to clarify that
6 issue, and make sure where we were at on that.

7 THE COURT: Well, right where we're at
8 right now is we still have the first half DeLeon,
9 this case, on July 10th, and we've got the second
10 half of DeLeon on November 6, but it's on a trailing
11 docket with Baca. So somebody has got to probably do
12 something with that. But that's where we stand at
13 the present time.

14 MR. DAVIS: Thank you, Judge.

15 THE COURT: Then somebody will have to
16 move. And if y'all can agree and -- you'll have to
17 work with Baca -- then I'll probably go along. But
18 if you don't agree, then I'll probably then wade in
19 and decide what I think is best.

20 MR. DAVIS: Thank you, Judge.

21 THE COURT: All right. Ms. Armijo.

22 MS. ARMIJO: And, Your Honor, I believe
23 that when we were in court last, we did say, because
24 there was speedy trial issues, that the trial to go
25 first in July would be the counts -- the first

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1 counts, the first batch, as you called it.

2 THE COURT: That was because of Ms.

3 Johnson.

4 MS. ARMIJO: That was because of Ms.

5 Johnson. But now, because we don't have that issue,
6 I believe that the United States would prefer to do
7 counts 6 through 12 first, which would entail the
8 Molina murder, and then also several conspiracies to
9 murder, and others. And then do -- for the second
10 trial the --

11 THE COURT: Older case.

12 MS. ARMIJO: -- the older cases. And I
13 would anticipate that the second trial would probably
14 be longer than the first trial, just as far as -- and
15 I'm sure people may disagree with all that, but
16 that --

17 THE COURT: Well, I would think it would be
18 a little bit longer, just because I'm anticipating
19 we're going to have more defendants in that -- what
20 I've been thinking of is the first half, but --

21 MS. ARMIJO: And there is four murders on
22 that one. So we would only have one murder and
23 assault and some conspiracies to commit murder as
24 well. So I believe I have shared that information
25 with some people that were asking before court. But

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1 I just wanted to let the Court know as well. And
2 we're fine, again, with continuing everything, as
3 long as we have new scheduling orders, and that
4 everything -- as you say, the ripple effect works.

5 THE COURT: Well, any quick reaction from
6 the defendants? Y'all may want to think about it.
7 Anybody got any -- Ms. Sirignano?

8 MS. SIRIGNANO: Your Honor, I just reached
9 out to Marcia Morrissey, who is counsel for Anthony
10 Cordova in the Baca case. And they're agreeing to
11 continuance of the November Baca trial date. I
12 understand from Mr. Blackburn we might need a little
13 bit more time on that.

14 THE COURT: Okay. Well, y'all talk about
15 it. One trial has got to go before another. The
16 defendants may have a preference. And if you can't
17 agree with the Government's proposal, then I guess
18 I'll have to decide. I guess I'm trying to think,
19 you know, really what the criteria would be. It
20 seems just choice.

21 All right. So let's maybe put that into
22 the scheduling order. That may require you to --
23 again, you've got to consult with the Baca people,
24 because I do remember Mr. Acton saying that was the
25 last time he was going to agree. And if we can't

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1 satisfy Mr. Acton, then I may be looking at -- I know
2 that's not what the Government wants -- pulling that
3 Baca case up and dealing with it, to deal with that
4 problem.

5 All right. Anything else we need to
6 discuss while we're together? Anything else I can do
7 for you --

8 MS. ARMIJO: No, Your Honor.

9 THE COURT: -- Ms. Armijo?

10 How about from the defendants? Anything
11 else we need to discuss? Anything else I can do for
12 you?

13 Let me ask, from the DeLeon standpoint, I'm
14 working on this motion to sever. Is there anything
15 that you'd prefer, opinion-wise, order-wise,
16 me-thinking-about-wise, that you'd prefer rather than
17 that?

18 Let me ask you, Ms. Sirignano, we're going
19 to be looking at trial with Mr. Garcia before we
20 probably see anything with DeLeon. Is there anything
21 that you would prefer I work on in your case rather
22 than in this case?

23 MS. SIRIGNANO: No, Your Honor. I spoke to
24 Mr. Beck earlier today, and if this July 10th comes
25 off, then the parties anticipate taking the July 10th

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1 date for the drug case, the 4275 case.

2 THE COURT: And that was all right with
3 Ms. Wild?

4 MS. SIRIGNANO: I'll check with her next.

5 THE COURT: Okay. I think I vaguely recall
6 us talking about that when we moved your May date to
7 June date.

8 MS. SIRIGNANO: Thank you, Your Honor.

9 THE COURT: And you don't have any
10 preference on what I work on, because I may have to
11 shift back to you and Mr. Garcia sooner rather than
12 later?

13 MS. SIRIGNANO: No, Your Honor. I think
14 the severance issue is probably pretty important for
15 most of us.

16 THE COURT: All right. Well, I appreciate
17 everybody's presentations, hard work on this.

18 Have a good weekend. I may not be seeing
19 you for a while. So I appreciate everybody's hard
20 work. We'll be in recess.

21 I'm going to have a detention hearing
22 following this.

23 (The Court stood in recess.)

24

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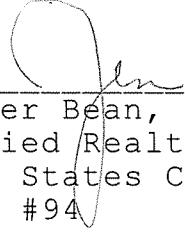
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4 DISTRICT OF NEW MEXICO
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7 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
8 Official Court Reporter for the State of New Mexico,
9 do hereby certify that the foregoing pages constitute
10 a true transcript of proceedings had before the said
11 Court, held in the District of New Mexico, in the
12 matter therein stated.

13 In testimony whereof, I have hereunto set my
14 hand on May 26, 2017.

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